

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

RAI GOULSBY,

Plaintiff,

v.

GEORGE B. EATON, S. BECKER, V.  
ABERCROMBIE,

Defendants.

CASE NO. C13-5970 RBL-KLS

ORDER ON PLAINTIFF'S  
PENDING MOTIONS

This matter has been referred to United States Magistrate Judge Karen L. Strombom pursuant to 28 U.S.C. § 636(b)(1), Local Rules MJR 3 and 4, and Fed. R. Civ. P. 72. Currently before the undersigned are two motions filed by plaintiff, Mr. Goulsby. Mr. Goulsby asks for appointment of counsel (Dkt. 35) and for leave to amend the complaint. Dkt. 36.

**Background**

In this action plaintiff alleges that his right to practice his religion by attending Christian church and his right to recreation and exercise were violated by the Defendants when they placed him in segregation at the Thurston County Jail. Dkt. 7.

Plaintiff filed his complaint in November of 2013 but the Court could not serve a defendant until June of 2014 due to the fact that Mr. Goulsby failed to properly identify defendants. Dkt. 24. After defendants filed an Answer the undersigned entered a pretrial

1 scheduling order and set an October 31, 2014 discovery cutoff date. Dkt. 29. Three days after  
 2 the discovery cutoff the Court received plaintiff's motions to appoint counsel and amend the  
 3 complaint. Dkt. 35 and 36.

4 A. Motion to amend the complaint.

5 Fed. R. Civ. P. 15(a) governs amendment of a complaint before trial:

6 (1) Amending as a Matter of Course. A party may amend its pleading once as a  
 7 matter of course within:

8 (A) 21 days after serving it, or

9 (B) if the pleading is one to which a responsive pleading is required, 21 days after  
 10 service of a responsive pleading or 21 days after service of a motion under Rule  
 11 12(b), (e), or (f), whichever is earlier.

12 (2) Other Amendments. In all other cases, a party may amend its pleading only  
 13 with the opposing party's written consent or the court's leave. The court should  
 14 freely give leave when justice so requires.

15 Fed. R. Civ. P. 15(a)(2) applies in this case as the answer was filed in July of 2014 and the  
 16 motion to amend was not filed until November 2014, over three months later. Dkt. 28 and 36.

17 A court's decision to deny a motion to amend is reviewed for abuse of discretion, but  
 18 there are policy reasons for liberally granting motions to amend when justice so requires.

19 *Sweeney v. Ada County*, 119 F.3d 1385, 1392 (9th Cir, 1997). The factors the undersigned must  
 20 consider include undue delay, bad faith, prejudice to the opponent, and futility. *Id.*

21 The discovery cutoff date has passed and discovery is closed. Dkt. 29. The delay in  
 22 filing the motion alone is grounds for denial. Amendment of the complaint at this late date  
 23 would necessitate reopening discovery. "If the proposed amendment requires the reopening of  
 24 discovery, the prejudice to the non-moving party will be considered greater than if the proposed  
 amendment presents only a new issue of law." *Voilas v. Gen. Motors Corp.*, 173 F.R.D. 389,  
 396 (D.N.J. 1997) (*Citing Harrison Beverage Co. v. Dribeck Importers, Inc.*, 133 F.R.D. 463,

1 469 (D.N.J.1990). In addition this Court has a local civil rule which addresses amending  
 2 complaints. The rule states:

3 A party who moves for leave to amend a pleading, or who seeks to amend a  
 4 pleading by stipulation and order, must attach a copy of the proposed amended  
 5 pleading as an exhibit to the motion or stipulation. The party must indicate on the  
 6 proposed amended pleading how it differs from the pleading that it amends by  
 7 bracketing or striking through the text to be deleted and underlining or  
 8 highlighting the text to be added. The proposed amended pleading must not  
 incorporate by reference any part of the preceding pleading, including exhibits. If  
 a motion or stipulation for leave to amend is granted, the party whose pleading  
 was amended must file and serve the amended pleading on all parties within  
 fourteen (14) days of the filing of the order granting leave to amend, unless the  
 court orders otherwise.

9 Local Civil Rule 15. Mr. Goulsby did not file a proposed amended complaint and his  
 10 motion to amend does not comply with the court's rules. Dkt. 36.

11 For all the reasons stated above, the plaintiff's motion to file an amended  
 12 complaint (Dkt. 36) is DENIED.

13 B. Appointment of counsel.

14 No constitutional right exists to appointed counsel in a § 1983 action. *Storseth v.*  
 15 *Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). *See also United States v. \$292,888.04 in U.S.*  
 16 *Currency*, 54 F.3d 564, 569 (9th Cir. 1995) (“[a]ppointment of counsel under this section is  
 17 discretionary, not mandatory.”) However, in “exceptional circumstances,” a district court may  
 18 appoint counsel for indigent civil litigants pursuant to 28 U.S.C. § 1915(e)(1) (formerly 28  
 19 U.S.C. § 1915(d)). *Rand v. Roland*, 113 F.3d 1520, 1525 (9th Cir. 1997), *overruled on other*  
 20 *grounds*, 154 F.3d 952 (9th Cir. 1998). In deciding whether exceptional circumstances exist, a  
 21 court must evaluate both “the likelihood of success on the merits [and] the ability of the  
 22 petitioner to articulate his claims *pro se* in light of the complexity of the legal issues involved.”  
 23 *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986) (quoting *Weygandt v. Look*, 718  
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1 F.2d 952, 954 (9th Cir. 1983)). A plaintiff must plead facts that show he has an insufficient  
2 grasp of his case or the legal issue involved and an inadequate ability to articulate the factual  
3 basis of his claim. *Agyeman v. Corrections Corp. of America*, 390 F.3d 1101, 1103 (9th Cir.  
4 2004).

5 Plaintiff states that he cannot afford to hire counsel and the action may involve  
6 conflicting testimony. Dkt. 35. However, neither the inability to hire counsel nor the fact that  
7 the parties may disagree regarding the facts are exceptional circumstances warranting court  
8 appointment of counsel. This case does not involve complex facts or law and Plaintiff has  
9 shown an ability to articulate his claims in a clear fashion understandable to the Court. Further,  
10 Plaintiff has does not show that he is likely to succeed on the merits of his case. The plaintiff's  
11 motion for appointment of counsel (Dkt. 35) is DENIED.

12 **Conclusion**

13 Plaintiff's motion to amend (Dkt. 36) and for appointment of counsel (Dkt. 35) are  
14 DENIED.

15 Dated this 30<sup>th</sup> day of December, 2014.

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18 Karen L. Strombom  
United States Magistrate Judge  
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